

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6260) CASE CLOSURE UNDER THE
6 ANDREW "ROCKY" RADZKOWSKI) ENFORCEMENT PRIORITY SYSTEM
7 ROCKY FOR CONGRESS AND SCOTT)
8 B. MACKENZIE, AS TREASURER)
9

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11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, matters that are low-rated

13
14 : are forwarded to the Commission with a recommendation for dismissal. The
15 Commission has determined that pursuing low-rated matters, compared to other higher rated
16 matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to
17 dismiss these cases. The Office of General Counsel scored MUR 6260 as a low-rated matter.

18 In this matter, the complainant, Brian D. Pierce, asserts that Andrew "Rocky"
19 Raczkowski, a candidate for Congress in Michigan's Ninth Congressional District, and his
20 campaign committee, Rocky for Congress and Scott B. Mackenzie, in his official capacity as
21 treasurer ("the Committee"), violated the Federal Election Campaign Act of 1971, as
22 amended ("the Act"), and its underlying regulations, by including defective disclaimers in two
23 campaign communications. First, the complainant states that, during February 2010, the
24 Committee began running a radio advertisement promoting Mr. Raczkowski's candidacy for
25 Congress. According to the complainant, although "the beginning of the ad" was "in
26 compliance by disclaiming that the ad is paid for by 'Rocky for Congress,'" Mr. Raczkowski
27 allegedly failed to state "My name is Rocky Raczkowski and I approve this message."
28 pursuant to 2 U.S.C. § 441d(d)(1)(A) and 11 C.F.R. § 110.11(c)(3). Attached to the

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1 complaint is what purports to be a transcript of the advertisement, which includes the
2 statements "This ad has been paid for by Rocky for Congress," and "I'm Rocky Raczkowski,"
3 but lacks "stand by your ad" language by the candidate.

4 Second, the complainant maintains that "a recent direct mail fundraising letter"
5 disseminated by the Committee fails to enclose the disclaimer "Paid for by Rocky for
6 Congress" within a printed box, as required by 2 U.S.C. § 441d(c)(2) and 11 C.F.R.
7 § 110.11(c)(2)(ii). A photocopy of what appears to be the letter, which is dated January 28,
8 2010, and solicits contributions and other forms of assistance, includes the disclaimer "This
9 Letter has been paid for by Rocky for Congress," on the bottom left-hand side, which is
10 marked with an asterisks but is not contained within a printed box.

11 In its response, the Committee, which apparently replied on behalf of
12 Mr. Raczkowski as well, stated that it would obtain a "complete recording" of the radio
13 advertisement in question and a copy of the mailing, and would forward them to this Office.
14 Subsequently, the Committee provided us with an MP3 file of the radio advertisement, the
15 contents of which are consistent with the text provided by the complainant. In addition, the
16 Committee provided an electronic version of the fundraising letter which, like the
17 complainant's version, is dated January 28, 2010. Although the Committee's fundraising
18 letter appears to be virtually identical to the photocopy supplied by the complainant, it
19 includes a slightly different disclaimer—"Paid for by: Rocky for Congress"—which is
20 marked with an asterisks and is also printed in darker type than the surrounding text. The
21 disclaimer is not contained in a printed box. Aside from providing the audio file and the
22 fundraising letter, the Committee does not address the complainant's allegations.

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1 In listening to the campaign radio advertisement, it suggests that appropriate disclaimers
2 may have been required, including a statement made by the candidate approving the message, as
3 set forth in 2 U.S.C. § 441d(d)(1)(A) and 11 C.F.R. § 110.11(c)(3). In addition, if the
4 fundraising letters constituted part of a “mass mailing,” defined as a mailing of over 500 pieces
5 of identical or substantially similar mail matter within a 30-day period, *see* 11 C.F.R. § 100.27,
6 they would likely have constituted “public communications,” as set forth in 11 C.F.R. § 100.26,
7 which would have made them subject to the FEC’s disclaimer requirements at 2 U.S.C. § 441d
8 and 11 C.F.R. § 110.11.

9 It appears that the communications contained sufficient identifying information to
10 prevent the public from being misled as to who paid for them. Additionally, the violations of
11 2 U.S.C. § 441d and 11 C.F.R. § 110.11, in this particular case, appear to be technical in nature.
12 Thus, in furtherance of the Commission’s priorities and resources, relative to other matters
13 pending on the Enforcement docket, the Office of General Counsel believes that the Commission
14 should exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*,
15 470 U.S. 821 (1985). Additionally, this Office intends on reminding Andrew “Rocky”
16 Raczkowski, and Rocky for Congress and Scott B. Mackenzie, in his official capacity as
17 treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11 concerning the use
18 of appropriate disclaimers on campaign radio advertisements and mailings.

19 **RECOMMENDATIONS**


20 The Office of General Counsel recommends that the Commission dismiss MUR 6260,
21 close the file, and approve the appropriate letters. In addition, this Office recommends
22 reminding Andrew “Rocky” Raczkowski, and Rocky for Congress and Scott B. Mackenzie, in
23 his official capacity as treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R.

§ 110.11 concerning the use of appropriate disclaimers on campaign radio advertisements and mailings.

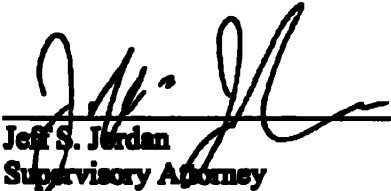
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